UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,141	07/13/2004	Richard B. Mansfield Jr.	PIP114MANSPCTUS	5336

31518 7590 09/30/2011

NEIFELD IP LAW, PC
4813-B EISENHOWER AVENUE
ALEXANDRIA, VA 22304

EXAMINER	
STAMBER, ERIC W	
ART UNIT	**PAPER NUMBER**
3622	

NOTIFICATION DATE	DELIVERY MODE
09/30/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

general@neifeld.com
rneifeld@neifeld.com
rhahl@neifeld.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD B. MANSFIELD, JR.

Appeal 2010-005578
Application 10/501,141
Technology Center 3600

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 3, 5, 10, 12 to 23, and 52 to 58. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

Claim 3 is illustrative:

> 3. A computer network implemented method for recalling product items for a product subject to a recall, comprising:
>
> determining, in a computer system, a CID associated with a product identification of said product subject to said recall, thereby indicating prior purchase by a person associated with said CID of a first product item of said product; and
>
> thereafter, in response to identifying at a terminal or kiosk of a retail store computer system, said CID, thereby indicating the presence of said person at said terminal or kiosk, providing to said person via said terminal or kiosk a notification of said recall for said product and offering to said person via said terminal or kiosk at least one of (1) a rebate when there is proof of purchase of a second product item for the same product as said first product item subject to said recall but which said second product item is not subject to said recall and (2) an incentive associated with said recall such that said incentive offers a discount upon the price of a subsequent purchase of a specified product item.

Appellant appeals the following rejection:

Claims 3, 5, 10, 12 to 23, and 52 to 58 under 35 U.S.C. § 103(a) as unpatentable over Knegendorf (US Pub. 2003/0074272 A1, pub. Apr. 17, 2003) in view of Abreu (US Pub. 2001/0056359 A1, pub. Dec. 27, 2001) and Official Notice.

ISSUE

Did the Examiner err in rejecting the claims because the prior art does not disclose or suggest identifying at a terminal or kiosk of a retail store computer the CID, and providing via the terminal or kiosk notification of the recall of the product?

FACTUAL FINDINGS

Knegendorf discloses notifying consumers of recall information by sending the recall information to the consumer's email address (para. [0054]), allowing users to access the recall information by telephone (para. [0055]), or by logging into a personalized portal user interface (para. [0053]) or in person (para. [0059]). Knegendorf does not disclose identifying at a terminal or kiosk of a retail store computer the CID of the product and providing via the terminal or kiosk notification of the recall of the product.

The Examiner finds that Knegendorf does not explicitly mention a terminal or kiosk of a retail store computer system (Ans. 4).

ANALYSIS

The Appellant argues that Knegendorf does not disclose identifying at a terminal or kiosk of a retail store computer the CID associated with the

product identification and providing via the terminal or kiosk notification of the recall of the product. We agree. The Examiner recognizes that Knegendorf does not disclose this subject matter and does not rely on another reference for teaching this subject matter. Rather, the Examiner reasons: "… it would have been obvious to one of ordinary skill at the time of the invention to have provided in-store kiosks and/or terminals for consumers to access the system so that … any consumer can check recall information while they are in the store." (Ans. 4). The Examiner has provided no factual basis for this conclusion. The Examiner has not relied on any reference that teaches a terminal or kiosk much less any reference that teaches a terminal or kiosk identifying a CID associated with a product identification of a product subject to recall and providing via the kiosk or terminal a notification of the recall.

A rejection based on 35 U.S.C. § 103(a) must rest on a factual basis. *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). In making such a rejection, the Examiner has the initial duty of supplying the requisite factual basis and may not, perhaps because of doubts that the invention is patentable, resort to speculation, unfounded assumptions, or hindsight reconstruction to supply deficiencies in the factual basis. *Id.*

Given the lack of adequate supporting evidence, we conclude that the Examiner's determination that it would have been obvious to have provided in-store kiosks and/or terminals for consumers to access the system so that any consumer can check recall information while they are in the store in view of the combination of the teachings of Knegendorf and Abreu, rests on speculation, unfounded assumptions, and/or hindsight reconstruction of the claimed invention.

In view of the foregoing, we will not sustain the Examiner's rejection.

DECISION

The decision of the Examiner is reversed.

REVERSED

hh